IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 16399 of 2002(B)

PETITIONERS:
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1. **THE MANAGING DIRECTOR,**
   KERALA WATER AUTHORITY,
   THIRUVANANTHAPURAM.

2. **THE EXECUTIVE ENGINEER,**
   PUBLIC HEALTH DIVISON,
   KERALA WATER AUTHORITY, THODUPUZHA.

BY ADV. SRI.BABU VARGHESE, SC, KWA
SRI.UNNIKRISHNAN(KOLLAM)

RESPONDENTS:
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1. **P.K.RAMACHANDRAN PILLAI,**
   THAYYIL HOUSE,. KADAVOOR P.O.,
   PANAMKARA-VIA, PAINGOTTOOR.

2. **STATE OF KERALA, REPRESENTED BY THE**
   SECRETARY TO LABOUR AND REHABILITATION (A)
   DEPARTMENT, GOVT. OF KERALA, SECRETARIATE,
   THIRUVANANTHAPURAM.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
GOVERNMENT PLEADER SRI.SURARSHAN
SRI.DINESH.M-SC-K.W.A

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.27799/2002 IN OP. NO.16399/2002

DISMISSED

12.1.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD DT.8.11.01 ISSUED BY COURT OF THE INDUSTRIAL TRIBUNAL, IDUKKI.

E.XT.P2:- COPY OF THE ORDER G.O.(Rt) NO.3009.98/LBR DT.26.9.98.

EXT.P3:- COPY OF THE PETITION FILED BY THE 1ST RESPONDENT BEFORE THE CONCILIATION OFFICER ON 11.9.1995.

EXT.P4;- COPY OF THE WRITTEN STATEMENT FILEDBY THE RESPONDENTS IN ID. NO.15/98 DT. NIL, IN THE INDUSTRIAL TRIBUNAL, IDUKKI.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P. No. 16399 OF 2002 B

Dated this the 12th day of January, 2007

J U D G M E N T

The officers of the Kerala Water Authority namely, the Managing Director and Executive Engineer, Thodupuzha, have come up with this original petition challenging Ext.P1 award of the Industrial Tribunal, Idukki in ID No.15/98, whereby the Tribunal directed the petitioners to reinstate the 1st respondent workman with 50% back wages. The issue referred for adjudication was,

> "Whether Sri.P.K.Ramachandran Pillai is entitled to be reinstated in service? If not, the benefits which he is eligible for?"

2. The contention of the 1st respondent was that he was appointed as a CLR worker under the management in January 1984 and worked continuously till 3.6.1987. He alleged that his services were terminated with effect from 3.6.1987 without assigning any reason. Although he claimed that he filed writ petition before the Supreme Court and obtained direction to reinstate him in service and regularize his services, he could not produce any proof to that effect before the Industrial Tribunal. Therefore, the Tribunal rejected his claim for regularization in service under the petitioners. But the Tribunal specifically found that the petitioners have not disputed the fact that the Kerala Water Authority is an industry as defined under the Industrial Disputes Act and the 1st respondent is a workman as defined under the Industrial Disputes Act. Since these facts were not disputed, the Tribunal

found that his termination of service without complying with the provisions of section 25F of the Industrial Disputes Act is illegal and unjustifiable. That is why the Tribunal directed the petitioners to reinstate the 1st respondent with 50% back wages. The back wages were limited to 50% taking into account the delay in raising the ID.

2. The contention of the petitioner is that since the Industrial Tribunal itself has negatived the contention of the 1st respondent that he is a CLR worker and he was only a daily waged worker, there is no question of reinstatement in service since daily waged employees are entitled to work only when there is work. On the other hand, the learned counsel for the 1st respondent would submit that he has been working continuously from January 1984 till 3.6.1987. Since the Industrial Disputes Act does not draw any distinction between permanent workman, casual workman, daily rated workman or temporary workman, as the 1st respondent had completed 240 days of service in one year he became entitled to the benefits of the provisions of the Industrial Disputes Act, whereby he could have been retrenched from service only after complying with the procedure prescribed under Section 25F. Since admittedly the petitioners have not complied with the procedure prescribed under section 25F, the learned counsel for the 1st respondent would submit that the award of the Industrial Tribunal is perfectly valid and sustainable.

3. I have considered the rival contentions in detail.

4. As I have already stated above, before the Industrial Tribunal the petitioners did not have a case that the Water Authority is not an industry or that the 1st respondent is not a workman. They also did not adduce any

evidence to the effect that they had actually complied with the provisions of section 25F of the Act. That being so, the only natural conclusion that was possible is that the retrenchment of the 1st respondent workman was illegal and unsustainable. Once retrenchment is held to be illegal and unsustainable the relief to which the workman is entitled to is reinstatement. That being so, I do not find any merit in the contentions of the petitioner especially since the Tribunal had awarded only 50% of the back wages. However, I make it clear that it would be open to the petitioners to retrench the workman after complying with the provisions of section 25F, if they so choose after reinstating him as directed by the Labour Court.. This will not preclude the workman from seeking regularization in service, if he is legally entitled to as per the law existing now and the management considering the same in accordance with law.

The original petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.16399/02B

J U D G M E N T

12th January, 2007